

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 13, 1998

UNITED STATES OF AMERICA)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 97A00158
)	
DESIGN CRAFT DOOR, INC.)	
Respondent.)	

FINAL DECISION AND ORDER OF JUDGMENT BY DEFAULT

PROCEDURAL HISTORY

This action arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA or the Act). The United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and Design Craft Door, Inc. is the respondent.

On September 8, 1997, complainant filed a complaint in five counts with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging 1) that the respondent had failed to prepare and/or present Employment Eligibility Verification Forms (Form I-9) for two named individuals hired after November 6, 1986; 2) that the respondent had failed to ensure that two named individuals hired after November 6, 1986 properly completed Section 1 of the Form I-9; 3) that the respondent had failed to ensure that four additional named individuals hired after November 6, 1986 properly completed Section 1 of the Form I-9; 4) that it had failed to properly complete Section 2 of the Form I-9 for one individual hired after November 6, 1986; and 5) that it had failed to properly complete Section 2 of the Form I-9 for one additional individual hired after November 6, 1986. Each of these alleged acts constitutes a separate violation of the Act. Civil money penalties in the total amount of \$3,050.00 are sought by complainant.

The complaint, along with a notice of hearing was mailed to David E. Nelson, President, Design Craft Doors, Inc. who had requested a hearing on behalf of respondent on February 23, 1996. That notice directed that an answer was to be filed within thirty (30) days, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.¹ The return receipt indicates that service was complete on September 15, 1997. Respondent has not filed an answer to the complaint.

¹ Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1997).

On November 24, 1997, complainant filed a Motion for Default Judgment on the grounds that respondent had failed to answer the complaint within the time provided.² OCAHO rules provide that the failure of a respondent to file a timely answer shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may thereafter enter judgment by default. 28 C.F.R. § 68.9(b).

On December 3, 1997, respondent was ordered to show cause within fifteen (15) days why Default Judgment should not issue, or in the alternative, to show good cause for its prior failure to answer, and to file an answer which comports with 28 C.F.R. § 68.9. No response was made to this Order, no request for extension of time was made, and the time for response has lapsed.

The purpose of a default judgment both historically and in contemporary practice is to protect a diligent party from delay caused by an essentially unresponsive party, see generally 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2681, (2nd Edition 1983 & Supp. 1994). That purpose is well served by default judgment here. I accept as true all factual allegations of the complaint, which describe with specificity the violations more fully set forth in my findings.

FINDINGS, CONCLUSIONS, AND ORDER

I have considered the record in this case, on the basis of which I find and conclude that:

1. Complainant's Motion for Default Judgment is granted.
2. As alleged in the complaint, respondent is in violation of 8 U.S.C. § 1324a(a)(1) with respect to each of the ten separate violations alleged in the complaint. The respondent is found to have:
 - (a) Count I: failed to prepare and/or make available for inspection Employment Eligibility Verification Form (Form I-9) for Kurt Ganoe and Francisco Herrera, hired after November 6, 1986, at an assessment of \$375 for each individual and a total civil money penalty of \$750.00.
 - (b) Count II: failed to ensure that Juan Duran-Solis and Jose Rodriguez, hired after November 6, 1986, properly completed Section 1 of the Form I-9, at an assessment of \$350.00 for each individual and a total civil money penalty of \$700.00.
 - (c) Count III: failed to ensure that John S. Davis, Sevy Phady, Robert M. Costanzo, and Jeffrey Nuuliitia Faletoi, hired after November 6, 1986, properly completed Section 1 of the Form I-9, at an assessment of \$250 for each individual and a total civil money penalty of \$1,000.00.

² 28 C.F.R. § 68.9(a) provides that the respondent shall have thirty days after service of a complaint to file an answer. Section 68.8(c)(2) provides that when service is had by mail, five days shall be added to the prescribed period.

- (d) Count IV: failed to properly complete Section 2 of the Form I-9 for Faustino Reyes Marquez, hired after November 6, 1986, at an assessment and total civil fine of \$350.00.
- (e) Count V: failed to properly complete Section 2 of the Form I-9 for Michelle L. Drath, hired after November 6, 1986, at an assessment and total civil fine of \$250.00.³

ORDER

1. Design Craft Door shall cease and desist from violating 8 U.S.C. § 1324a.
2. Design Craft Door shall pay a civil money penalty in the total amount of \$3,050.00 for violations listed in the complaint.

SO ORDERED.

Dated and entered this 13th day of January, 1998.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.

³There is no indication in the record on why the complainant is seeking different penalties for the violations of the same provisions in Counts II and III and in Counts IV and V. While the penalties are all within the statutory range of 8 U.S.C. § 1324a(e)(5), such differences ordinarily should be justified on the record. However, since this is a default judgment, I accept the complainant's requested fine amounts.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1998, I have served copies of the foregoing Final Decision and Order of Judgment by Default on the following persons at the addresses indicated.

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